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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

**THE CINCINNATI SPECIALTY
UNDERWRITERS INSURANCE
COMPANY**, a Foreign Insurance Company,

Plaintiff,

vs.

PLATINUM EXTERIORS, INC., an Oregon corporation; **COLLEGIATE CONSTRUCTION, LLC**, a Georgia limited liability company; **ATEC ENTERPRISES, LLC**, an Oregon limited liability company; and **JUSTIN JOHN BRYANT**, Personal Representative of the Estate of **LEE BRYANT**, deceased,

Defendants.

Case No. 6:17-cv-0586

COMPLAINT FOR DECLARATORY RELIEF

28 U.S.C. § 1332(a)(2)

Plaintiff The Cincinnati Specialty Underwriters Insurance Company alleges as follows:

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NATURE OF ACTION

1.

In this action, plaintiff The Cincinnati Specialty Underwriters Insurance Company seeks a declaration that it has no duty to defend, indemnify or pay insurance benefits with respect to an underlying lawsuit, *Estate of Bryant v. Platinum Exteriors, Inc., et al.*, Multnomah County Circuit Court Case No. 16CV26482 (the “Underlying Suit”).

PARTIES

2.

Plaintiff The Cincinnati Specialty Underwriters Insurance Company (“Cincinnati”) is a Delaware corporation having its principal place of business in Fairfield, Butler County, Ohio.

3.

On information and belief, defendant Platinum Exteriors, Inc. (“Platinum”) is an Oregon corporation having its principal place of business in Jefferson, Marion County, Oregon.

4.

On information and belief, defendant Collegiate Construction, LLC (“Collegiate”) is a Georgia limited liability company having its principal place of business in Watkinsville, Oconee County, Georgia.

5.

On information and belief, defendant Atec Enterprises, LLC (“Atec”) is an Oregon limited liability company having its principal place of business in Springfield, Lane County, Oregon.

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6.

On information and belief, defendant Justin John Bryant is an Oregon resident and was appointed Personal Representative of the Estate of Lee Bryant, deceased (“Bryant”), in Lane County Circuit Court Case No. 15PB01523.

JURISDICTION AND VENUE

7.

Subject Matter Jurisdiction. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a)(2), because Plaintiff is an Ohio corporation and defendants are residents of Oregon and Georgia, and because the matter in controversy exceeds, exclusive of interest and costs, the sum specified by 28 U.S.C. § 1332(a).

8.

Personal Jurisdiction. This Court has personal jurisdiction over the defendants who, on information and belief, resided in Oregon and/or conducted business in Oregon at relevant times.

9.

Venue. Divisional venue is properly laid in this Court pursuant to LR 3-2(a)(3), because this division is where a substantial part of the events or omissions giving rise to this action occurred.

FACTUAL ALLEGATIONS

10.

Cincinnati issued Commercial General Liability insurance to Platinum under Policy No. CSU0052120, which was in effect from October 26, 2014 to October 26, 2015 (the “Primary Policy”).

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11.

On information and belief, Collegiate is an additional insured on the Primary Policy.

12.

The Primary Policy contains an exclusion for “Bodily Injury to Contractors’ Or Subcontractors’ Employees,” which bars coverage for bodily injury to “[a]ny employee of any: (1) Contractor; or (2) Subcontractor; and (a) Arising out of and in the course of 1) Employment; or 2) Performing duties related to the conduct of an insured’s business or the business of a contractor or subcontractor.”

13.

The exclusion for “Bodily Injury to Contractors’ Or Subcontractors’ Employees” also bars coverage for bodily injury to “[t]he spouse, child, parent, brother or sister of that ‘employee’ as a consequence of” bodily injury to an employee of a contractor or subcontractor.

14.

The exclusion for “Bodily Injury to Contractors’ Or Subcontractors’ Employees” defines “employees” to include “any person who is hired for a wage, salary, fee or payment to perform work.”

15.

The Primary Policy contains additional terms, limitations, exclusions and/or endorsements that may also operate to bar or limit coverage for the Underlying Suit.

16.

Cincinnati also issued Commercial Excess Liability insurance to Platinum under Policy No. CSU0052716, which was in effect from November 8, 2014 to November 8, 2015 (the “Excess Policy”).

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17.

The Excess Policy provides coverage subject to the same provisions, exclusions and limitations that are contained in the Primary Policy, and the Excess Policy contains no provision or endorsement superseding or modifying the exclusion for “Bodily Injury to Contractors’ Or Subcontractors’ Employees” in the Primary Policy.

18.

The Excess Policy contains additional terms, limitations, exclusions and/or endorsements that may also be applicable to the Underlying Suit.

19.

On information and belief, Collegiate was general contractor for work performed at the Retreat at Oak Creek in Corvallis, Oregon (the “Project”).

20.

On information and belief, Collegiate hired Platinum to perform certain work on the Project, including installation of siding.

21.

On information and belief, Platinum hired Atec to perform some of the siding installation at the Project.

22.

On information and belief, Bryant was the owner and/or an employee of Atec.

23.

On February 23, 2015, Bryant sustained fatal injuries when he fell from a ladder while installing siding on the Project.

24.

Bryant's estate has now sued Platinum and Collegiate in the Underlying Suit for damages in the amount of \$3,455,000 flowing from Bryant's death. The estate has asserted claims against Platinum and Collegiate in the Underlying Suit for negligence, violation of the Oregon Employer's Liability Law, and negligence *per se* under the Oregon Safe Employment Act.

25.

Cincinnati is defending Platinum in the Underlying Suit under a reservation of rights.

CAUSE OF ACTION FOR DECLARATORY RELIEF

(Against All Defendants)

26.

Cincinnati realleges the preceding paragraphs as though fully set forth herein.

27.

An actual controversy within the jurisdiction of this Court exists between Cincinnati and the defendants regarding the existence and scope of coverage under the Primary Policy and the Excess Policy with respect to the claims and damages alleged in the Underlying Suit.

28.

Cincinnati is entitled to a declaration that the Primary Policy and Excess Policy do not cover the claims and damages alleged in the Underlying Suit due to, among other things, the exclusion for "Bodily Injury to Contractors' Or Subcontractors' Employees."

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29.

Cincinnati is also entitled to a declaration that the Primary Policy and Excess Policy do not cover the claims and damages alleged in the Underlying Suit based upon the application of one or more other policy terms, limitations, exclusions and/or endorsements.

30.

Cincinnati is further entitled to a declaration that it has no duty to defend Platinum or Collegiate in the Underlying Suit, and that Cincinnati may immediately cease and withdraw from any further defense of Platinum in the Underlying Suit.

RESERVATION OF RIGHTS

Cincinnati reserves the right to amend its Complaint to assert additional claims, allegations and/or other matters as additional facts are obtained through discovery and investigation.

PRAAYER FOR RELIEF

WHEREFORE, plaintiff Cincinnati prays for relief as follows:

1. For a declaration that Cincinnati has no duty to indemnify or pay any sums to or on behalf of any defendant with respect to the Underlying Suit;
2. For a declaration that Cincinnati has no duty to defend Platinum or Collegiate with respect to the Underlying Suit;
3. For a declaration that Cincinnati may immediately cease and withdraw from defending Platinum in the Underlying Suit; and
4. For such other and further relief as this Court deems just and equitable.

DATED this 13th day of April, 2017.

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